

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TYRONE PUMPHREY,
Plaintiff,

v.

CONTRA COSTA COUNTY,
Defendant.

Case No. 20-cv-08474-JSC

**ORDER RE: MOTION FOR LEAVE TO
AMEND**

Re: Dkt. Nos. 50, 51

Before the Court is Plaintiff's motion for leave to amend his civil rights complaint against Contra Costa County.¹ (Dkt. No. 50.)² After carefully considering the parties' briefing, the Court concludes that oral argument is not necessary, *see* N.D. Cal. Civ. L.R. 7-1(b), and DENIES the motion. Plaintiff has not shown good cause for his late motion for leave to amend. The further case management conference scheduled for November 10, 2021 is CONTINUED to January 20, 2022.

BACKGROUND

This case arises from events of June 8, 2019, when Plaintiff alleges he was arrested and beaten by Pittsburg police officers, taken to Martinez Jail, and beaten by County deputies there. (Dkt. No. 1.) Plaintiff filed suit against seven named officers and 25 Doe officers of the City of Pittsburg, 25 Doe deputies of Contra Costa County, and the County. (*Id.*) His claims against the Pittsburg Defendants were later dismissed. (Dkt. No. 47.) Plaintiff's remaining claim, as against

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 9, 21, 38.)

² Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

Contra Costa County and its Doe deputies, is for excessive force in violation of his Fourteenth Amendment rights as a pretrial detainee. (Dkt. No. 1 at 1, 11.)

By pretrial order, the Court set a “deadline to move to amend pleadings” of September 2, 2021. (Dkt. No. 44 at 1.) On October 4, 2021, Plaintiff moved for leave to amend, seeking to name Deputy Brandon Battles and to “allow for further amendment for the sole purpose to name other Contra Costa County Deputies in place of DOE defendants when the identities of these individuals are discovered.” (Dkt. No. 50 at 1.)

DISCUSSION

I. Rules 15 and 16

As an initial matter, Plaintiff argues that Rule 15 governs the motion, while Defendant maintains that Rule 16 governs. “[A] party seeking to amend [a] pleading after [the] date specified in [the] scheduling order must first show ‘good cause’ for amendment under Rule 16(b), then, if ‘good cause’ be shown, the party must demonstrate that amendment was proper under Rule 15[.]” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (citation omitted); *see In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013).

The scheduling order set a “deadline to move to amend” that indisputably had passed when Plaintiff filed the instant motion. (Dkt. No. 44.) Plaintiff argues, however, that the scheduling order did not set a deadline to name Doe Defendants. This argument suggests a distinction between naming Doe Defendants and amending the complaint, but Plaintiff does not support that distinction with legal authority. In the absence of authority to the contrary, common sense dictates that naming Doe Defendants constitutes an amendment: it joins new parties and thereby changes the terms of Plaintiff’s case. Accordingly, Plaintiff must meet Rule 16’s standard to modify the scheduling order, followed by Rule 15’s standard to amend the complaint. *E.g., Dixon v. Cushman & Wakefield W., Inc.*, No. 18-cv-05813-JSC, 2020 WL 5993232, at *2 (N.D. Cal. Oct. 9, 2020).

A. Rule 16(b)

Under Rule 16(b), a party seeking leave to amend must demonstrate “good cause” for

1 doing so. Fed. R. Civ. P. 16(b). “Rule 16(b)’s ‘good cause’ standard primarily considers the
2 diligence of the party seeking the amendment,” and “[i]f that party was not diligent, the inquiry
3 should end.” *Johnson*, 975 F.2d at 609. Although the Court may consider prejudice to the
4 opposing party, “the focus of the inquiry is upon the moving party’s reasons for seeking
5 modification.” *Id.*

6 Plaintiff has not been diligent in moving to amend to add Deputy Battles as a defendant. A
7 few days after the incident, Plaintiff filed a citizen complaint. In connection with that complaint,
8 on June 13, 2019 he gave a recorded interview; the transcript of the interview identifies Deputy
9 Battles. (Dkt. No. 51-6.) Plaintiff filed this action in December 2020 and Contra Costa appeared
10 in May 2021. (Dkt. No. 37.) On May 17, 2021, Contra Costa served its initial disclosures
11 identifying Deputy Battles as a witness who “will testify about the events of June 8, 2019, as they
12 pertain to Tyrone Pumphrey.” (Dkt. No. 52-1.) Following a case management conference the
13 Court issued a pretrial order setting the September 2, 2021 deadline for moving to amend
14 pleadings. (Dkt. No. 44.) Yet Plaintiff took no steps to add Deputy Battles as a defendant or take
15 any discovery of Contra Costa regarding the identity of the Doe Defendants until after the deadline
16 for moving to amend had passed. (Dkt. No. 50-4.) Indeed, as of the filing of the November 5,
17 2021 case management conference statement, he had not even served his own initial disclosures.
18 (Dkt. No. 54 at 4.) Such conduct is not diligence.

19 Plaintiff argues he has nonetheless shown good cause for amendment because while
20 Contra Costa’s initial disclosure identified Deputy Battles as a potential witness likely to have
21 discoverable information, it did not describe his involvement in the incident. Rule 26 requires a
22 party to identify “each individual likely to have discoverable information—along with the subjects
23 of that information.” Fed. R. Civ. P. 26(a)(1)(A)(i). The subject of his information is what
24 happened to Plaintiff on June 8, 2019, and since Deputy Battles is a Contra Costa Sheriff’s
25 Deputy, the disclosure put Plaintiff on notice that Deputy Battles had information regarding what
26 happened to Plaintiff at the jail. Rule 26 did not require Contra Costa to describe his involvement
27 in the incident. Diligence required Plaintiff to follow up with discovery or even informally ask
28 Contra Costa about Deputy Battles’ involvement before the deadline to move to amend. The

record does not show that Plaintiff did either.

Plaintiff also urges that counsel was diligent in reviewing the disclosure and, while counsel was dealing with personal medical issues, he met with Plaintiff many times to try to recollect details of the traumatic incident. However, Plaintiff attests that he was later unable to recall the information provided in the citizen complaint process due to the trauma of the incident. (*See* Dkt. No. 53-1.) Even if Plaintiff could not recall the information in the citizen complaint, he does not attest that he did not recall making the complaint and being interviewed and thus that he could have sought those materials in discovery. And, even if he could not recall those events, he still could have served discovery on Contra Costa. He inexplicably failed to do so until after the deadline for amendment. Plaintiff's delay in seeking to identify the Doe Defendants "is not compatible with a finding of diligence." *Johnson*, 975 F.2d at 609; *see Manriquez v. City of Phoenix*, 654 F. App'x 350, 351 (9th Cir. 2016), *aff'g* No. CV-11-1981-PHX-SMM, 2014 WL 1319297, at *10 (D. Ariz. Mar. 31, 2014) ("[The officer's] potential involvement . . . was evident from deposition testimony elicited in March 2012. Instead of seeking modification of the scheduling order at that time, Plaintiffs waited until June 29, 2012, approximately three months later, to file a motion to amend the Complaint. Plaintiffs failed to exercise reasonable diligence . . .").

Because Plaintiff has not met the Rule 16(b) requirement, a Rule 15 analysis is not necessary. *See Johnson*, 975 F.2d at 608-09.

II. Administrative Motion to File Under Seal

Also pending before the Court is Defendant's administrative motion to file under seal, which is unopposed. (Dkt. No. 51.) Defendant seeks to file under seal (1) Plaintiff's June 13, 2019 written complaint to the County Sheriff's Office and (2) the audio and transcript of Plaintiff's June 13, 2019 interview with the Office. (Dkt. Nos. 51-4, 51-6.)

"Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable." N.D. Cal. Civ. L.R. 79-5(c). Nevertheless, Mr. Battles's privacy interest in the documents and the related personnel investigation is good cause for sealing. *See Bickley v.*

1 *Schneider Nat., Inc.*, 2011 WL 1344195, at *2 (N.D. Cal. Apr. 8, 2011) (“Federal courts expressly
2 recognize a constitutionally-based right of privacy that can be raised in response to discovery. An
3 employee’s personnel records and employment information are protected by the constitutional
4 right to privacy.” (citation omitted)); *see also Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
5 1172, 1178–80 (9th Cir. 2006) (applying “good cause” standard to motions to seal documents
6 attached to non-dispositive motions).

7 “A party must explore all reasonable alternatives to filing documents under seal, minimize
8 the number of documents filed under seal, and avoid wherever possible sealing entire documents
9 (as opposed to merely redacting the truly sensitive information in a document).” N.D. Cal. Civ.
10 L.R. 79-5(a). Defendant’s request does not meet this burden. Plaintiff’s written complaint does
11 not identify any officers. The interview transcript identifies officers in only a few instances.
12 Therefore, Defendant’s motion is GRANTED only in part; the interview audio may be filed under
13 seal, and the officer names in the interview transcript at Docket No. 51-6 at 5:54, 5:55, 18:634,
14 18:645, may be filed under seal. The motion is DENIED as to Docket No. 51-4 and all other
15 portions of Docket No. 51-6.

16 CONCLUSION

17 Plaintiff’s motion for leave to amend is DENIED. Plaintiff shall provide Contra Costa
18 with his initial disclosures on or before November 18, 2021. The case management conference
19 scheduled for November 10, 2021 is CONTINUED to January 20, 2022 at 1:30 p.m.

20 This Order disposes of Docket Nos. 50, 51.

21 **IT IS SO ORDERED.**

22 Dated: November 9, 2021

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24 
25 JACQUELINE SCOTT CORLEY
26 United States Magistrate Judge
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